

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4032 OF 1990

Shri Vasant Balkrishna Lokhande,)
aged about 49 years, Occ: Business,)
Residing at 80, Rasta Peth,)
Pune - 11.).. Petitioner
(Org.Plaintiff)

Vs.

Smt.Roothbai Soloman Harding,)
aged 56, Occupation: Household,)
Residing at 80, Rasta Peth,)
Pune - 11.).. Respondent
(Org.Defendant)

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Mrs.Smita mane for Shri Prafulla Shah for the
petitioner.

None for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29th September, 2004.

Oral Judgment :

1. Heard the learned advocate for the petitioner.
None present for the respondent, though served.
Perused the records.

2. The petitioner challenges the judgment and
order dated 7th December, 1989 passed by the lower
appellate Court setting aside the decree of eviction

passed by the trial Court against the respondent. The trial Court by its judgment and decree dated 16th February, 1987 in Civil Suit No.1534 of 1983 passed the order of eviction of the respondent on the ground of default in payment of rent.

3. The petitioner herein issued the notice dated 16th June, 1983 calling upon the respondent to pay the arrears of rent for the period from 1st June, 1982 till May, 1983 at the rate of Rs.75/- per month. It was the case of the petitioner that though initially the monthly rent was Rs.30/-, in pursuance of the consent decree passed in Civil Suit No.1289 of 1982, the same was fixed at the rate of Rs.75/- per month, and accordingly the respondent was required to pay the rent at the rate of Rs.75/- p.m. from 1st June, 1982 onwards, and as she failed to pay the same, the said notice was issued. The respondent however paid the rent at the rate of Rs.30/- per month. She contended that the said consent decree was obtained by playing a fraud upon the respondent. The petitioner filed suit for eviction of the respondent in the month of August, 1983 which was decreed by the judgment dated 16th February, 1987 on the ground of default in payment of rent. The lower appellate Court, however, set aside

the decree and at the same time directed the payment of arrears of rent at the rate of Rs.75/- per month. Hence, the present petition.

4. The learned advocate for the petitioner, while assailing the impugned judgment and order submitted that the lower appellate Court erred in interfering with the decree of eviction passed by the trial Court merely on the ground that the respondent had paid the rent at the rate of Rs.75/- per month subsequent to the filing of the suit, ignoring the fact that the respondent did not establish any sufficient cause for non-payment of rent for the period for which it was asked for, nor it was established that the decree in Civil Suit No.1289 of 1982 was ever set aside by the Court or even challenged by the respondent at any point of time. It is the contention of the petitioner that the said decree had attained finality for all purposes and it was obligatory on the part of the respondent to pay Rs.75/- per month. She having failed to pay the same, the trial Court had held that there was default in payment of rent and on that count, the respondent was directed to be evicted from the suit premises.

5. Perusal of the impugned judgment and order discloses that the interference by the lower appellate Court in the decree passed by the trial Court has been solely on the ground that subsequent to the filing of the suit, the respondent had deposited arrears of rent at the rate of Rs.75/- per month and had continued to deposit the same at the rate of Rs.75/-. However, the further analysis of the materials and findings thereon disclose that even such deposit was not made regularly and the rent was not paid every month. That apart, once the suit being filed on the ground of default in payment of rent, it was necessary for the Court below to ascertain whether there was really any such default during the period in respect of which the suit was filed and whether there was any sufficient cause for the tenant not to pay the rent for the said period. The trial Court having considered this aspect of the matter, had found no reason or cause for default in payment of rent for the relevant period. The records disclose that the sole defence which was raised by the respondent for non-payment of rent was that the claim of rent by the petitioner was at the rate of Rs.75/- per month when the actual monthly rent of the suit premises was Rs.30/-. However, the petitioner had clearly established that under the consent decree in

Civil Suit No.1289 of 1982, the rent was increased from Rs.30/- to Rs.75/- per month, and therefore, the respondent was liable to pay the rent of the suit premises at such rate from 1st June, 1982 onwards. Indeed, the said decree had attained finality for all purposes as it was never challenged by the respondent, and as such was not set aside by the Court. Merely alleging that the said decree was obtained by fraud that cannot enure to the benefit of the respondent to disobey the said decree or to avoid the consequences which are bound to follow pursuant to the non-compliance of the said decree. In the circumstances, the petitioner, while justifying the claim at the rate of Rs.75/- per month from 1st June, 1982 onwards, and the respondent in that regard having failed to pay the same, there was clearly default in payment of rent without any sufficient cause being disclosed for the same, and therefore, the trial Court was justified in ordering the eviction of the respondent from the suit premises.

6. As rightly submitted by the learned advocate for the petitioner that the lower appellate Court erred in ignoring the fact that the relevant period in relation to the issue of default in payment of rent

was prior to the filing of the suit and not subsequent to the filing of it. Merely because the respondent had paid Rs.75/- per month subsequent to the filing of the suit, it could not justify the default in payment of rent prior to the filing of the suit nor that by itself can be a justification for dismissal of the suit for eviction of the tenant on the ground of default in payment of rent. There was absolutely no satisfactory explanation for non-payment of rent for the period for which it was due from the respondent to the petitioner. Being so, the trial Court's order was clearly borne out from the materials placed on record whereas the findings arrived at by the lower appellate Court are not only contrary to the records but also against the provisions of law and obviously are without application of mind. Hence, the findings of the lower appellate Court that the respondent had deposited all the arrears of rent on the date of the hearing of the suit and that therefore was not a willful defaulter cannot be sustained and are liable to be quashed and set aside while confirming the finding regarding the default in payment of rent arrived at by the trial Court.

8. Consequently, for the reasons stated above the

impugned judgment and order of the lower appellate Court cannot be sustained and is liable to be quashed and set aside and the decree of eviction passed by the trial Court is liable to be confirmed. The petition, therefore, succeeds. The impugned judgment and order passed by the lower appellate Court is hereby quashed and set aside and the judgment and decree of eviction passed by the trial Court is hereby confirmed. Rule is made absolute in above terms with no order as to costs.
